

Remarks/Arguments:

Claim 13 has been amended to correct a typographical error. Claims 1, 10 and 16 have also been amended, as will be discussed in greater detail below.

The Notice of Panel Decision from Pre-Appeal Brief Review of April 27, 2009 indicates that claims 1-38 remain rejected. In particular, claims 1, 3, 10, 12, 16-22 and 28-32 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2004/0258039 (Stephens), U.S. Patent No. 7260392 (Kitchin) and U.S. Patent No. 7289453 (Riedel). The remainder of the claims are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references in various combinations with U.S. Patent 6912387 (Haas), U.S. Publication No. 2004/0151136 (Gage), U.S. Patent No. 5682460 (Hyziak) and U.S. Patent No. 6771594 (Upadrashta).

Amendments have been made to the claims to further distinguish over the cited references. Specifically, claim 1 has been amended to recite, in part:

"repeating said transmitting step until said transmitting step fails;
determining, responsive to said transmitting step failing, a quality of said link at an electronic device..." [emphasis added]

Applicant respectfully submits that none of the cited references, alone or in combination, satisfy the above features of claim 1. With regards to Stephens, Figure 2 of Stephens, at block 210, requires that a "service value (e.g., specified service level, QoS value, max. latency, ...)" be received or detected before transmission even begins. This is clear from blocks 215 and 220 of Stephens' Figure 2, which set out Stephens' steps for transmitting data. Given that Stephens requires the "service value" in order to select a transmit mode, Stephens cannot

possibly satisfy, “determining, responsive to said transmitting step failing, a quality of said link at an electronic device” as recited in Applicant’s claim 1. On the contrary, Stephens has not even begun transmitting data, so there cannot possibly have been a transmission failure. Therefore, Stephens in fact teaches directly against the above-recited features of claim 1, as Stephens explicitly requires a service value before any transmissions are made, and has no use for such a service value once a transmit mode has been selected and data has been transmitted.

Kitchin merely describes a transmission process in which a transmitter “sends each packet and waits for an acknowledgement. If the transmitter receives an acknowledgement, it moves onto the next packet, but if it does not, it retransmits the same packet” (Kitchin, col. 3, ll. 2-5). No mention whatsoever is made of “determining, responsive to said transmitting step failing, a quality of said link at an electronic device,” as recited in Applicant’s amended claim 1.

Riedel provides for the monitoring of quality-of-service (QoS) parameters, but makes no mention of doing so responsive to a transmitting step failing. Rather, the “QoS management unit” of Riedel consistently monitors such information, without any concern for the success or failure of packet transmissions.

Applicant therefore submits that none of Stephens, Kitchin or Riedel, alone or in combination, satisfy the features of claim 1. Claim 1 is believed to be patentable for the reasons above, as well as those set out by Applicant in previous replies. In particular, Applicant continues to rely on previous arguments that the Examiner’s earlier combination of Stephens and Kitchin is improper, in that the requisite rational underpinning in support of the combination has not been provided.

Claims 10 and 16 have been amended to include features similar to those of claim 1, and are therefore believed to be patentable for at least the above reasons. In addition, Applicant continues to rely on previous arguments that claim 16 is supported by the specification. All remaining claims are dependent upon one of claims 1 and 10, and are therefore also believed to be patentable for at least the above reasons.

Conclusion:

Applicant believes that this application is now in condition for allowance. To the extent that any issues remain to be resolved, however, Applicant requests that the Examiner contact the undersigned to resolve these issues.

The Commissioner is also authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-3750.

Date: May 27, 2009

Respectfully submitted,



T. Andrew Currier, Reg. No. 45400

Perry + Currier Inc.
1300 Yonge Street, Suite 500
Toronto, Ontario
CANADA, M4T 1X3
(416) 920-8170